

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY

Petition to Make Housekeeping Revisions
And a Compliance Change to filed Rate Formula

)
)
)
)

Docket No. 14-0316

REPLY BRIEF OF

THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois

By LISA MADIGAN, Attorney General

Karen L. Lusson
Senior Assistant Attorneys General
Public Utilities Bureau
Illinois Attorney General's Office
100 West Randolph Street, 11th fl.
Chicago, Illinois 60601
Telephone: (312) 814-1136
Facsimile: (312) 812-3212
E-mail: klusson@atg.state.il.us

October 15, 2014

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
)	Docket No. 14-0316
Petition to Make Housekeeping Revisions)	
And a Compliance Change to filed Rate Formula)	

**REPLY BRIEF OF
THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois, by and through Attorney General Lisa Madigan (“AG” or “the People”) hereby submit the following Reply Brief in response to the Initial Brief filed by Commonwealth Edison Company (“ComEd” or the “Company”) in the above-captioned proceeding.

I. INTRODUCTION

The Commission Staff (“Staff”) have proposed a reasonable approach to defining ComEd’s formula rate tariff that is consistent with Section 16-108.5(c) and (d) of the Energy Infrastructure Modernization Act (“EIMA”), and prior Commission orders, and one that retains the Commission’s ability to make reasonable adjustments under Article IX of the Public Utilities Act (“the Act”) in annual formula rate update cases. Staff witness Theresa Ebrey testified that ComEd’s formula rate structure approved by the Commission to be set forth in the Rate DSPP tariff as Tariff Sheet Nos. 417 - 437 that were approved by the Commission in Docket No. 11-0721 and later revised in Docket No. 13-0386, the filing implementing the requirements of SB-9

(P.A. 98-0015)¹ should be designated by the Commission in this docket as the Company's formula rate tariff. Staff Ex. 1.0 at 3. She noted that the formats for only two schedules are included within those tariff sheets, Schedules FR A-1 (Net Revenue Requirement Computation on Sheet Nos. 423 - 424) and FR A-1 REC (Revenue Requirement Reconciliation Computation on Sheet No. 425). Staff Ex. 1.0 at 4. ComEd, on the other hand, complains that (1) challenges by Staff and Intervenor in prior formula rate update cases to different aspects of ComEd's formula rate in the annual formula rate update ("FRU") cases should have been "kept out of the FRUs, and instead addressed in Article IX dockets, under EIMA"; and (2) that the tariff should instead be defined as not only the summary Schedules Sch FR A-1 and Sch FR A-1 REC, "but also the entire body of Schedules and Appendices expressly incorporated by reference in Rate DSPP, and filed in numerous compliance filings." ComEd Brief at 3, 5.

ComEd's position should be rejected. As discussed below, Staff and Intervenor proposed adjustments in FRU proceedings to date have amounted to nothing more than consistent applications of the General Assembly's directive that require the Commission to apply "the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act" to formula rate annual dockets, as both Sections 16-108.5(c) and (d)(3) require. Adoption of ComEd's position would unlawfully limit the Commission's ability to apply Article IX ratemaking analysis to annual FRU proceedings. ComEd's position, as discussed further below, should be rejected by the Commission.

¹ The tariff approved in Docket No. 13-0386 was later modified in Docket No. 13-0553, pursuant to the Commission's investigation of that revised formula rate tariff.

II. ADOPTION OF COMED’S DEFINITION OF ITS FORMULA RATE TARIFF WOULD UNLAWFULLY HAMSTRING THE COMMISSION’S ABILITY TO ASSESS THE REASONABLENESS AND PRUDENCY OF COMED’S PROPOSED RATES.

A. Prior Commission Orders Do Not Support ComEd’s Proposed Definition of the Formula Rate Tariff.

ComEd argues at pages 5-7 of its Brief that prior Commission orders in Dockets 11-0721 and 12-0321 did not in any way constitute decisions on how ComEd’s formula rate tariff should be defined. ComEd IB at 5-7. In addition, the Company points out that the Commission separately considered changes to ComEd’s formula rate tariff on three discrete issues raised by Staff and intervenors in a separate Article IX investigation in Docket 13-0553. *Id* at 10. ComEd opines that the Commission’s order in Docket 13-0318 considered these adjustments as “beyond the scope of this Section 16-108.5(d) annual update and reconciliation proceeding.” *Id.* at 9.

These arguments, however, miss the mark. First, as noted by Staff witness Ebrey, by approving only Schedules FR A-1 and FR A-1 REC for Rate DSPP as the formula rate tariff in its Order in 11-0721, the Commission effectively defined the “formula rate structure” to be limited to those two formula rate schedules. Staff Ex. 1.0 at 3. Moreover, the Commission designated ComEd’s formula rate, Rate DSPP tariff, as Tariff Sheet Nos. 417 - 437 that were approved by the Commission in Docket No. 11-0721 and later revised in Docket No. 13-0386, the filing implementing the requirements of SB-9 (P.A. 98-0015).² She noted that the formats for only two schedules are included within those tariff sheets, Schedules FR A-1 (Net Revenue Requirement Computation on Sheet Nos. 423 - 424) and FR A-1 REC (Revenue Requirement Reconciliation Computation on Sheet No. 425). *Id.* at 4. Additional schedules, appendices and workpapers are listed by number and name on Sheet Nos. 426 and 427, but no specific

² The tariff approved in Docket No. 13-0386 was later modified in Docket No. 13-0553, pursuant to the Commission’s investigation of that revised formula rate tariff.

information regarding what is to be included on those ancillary documents is presented in the Rate DSPP tariff, outside of titles for those documents.

Second, while the Commission did defer resolution of three issues to a separate investigation, Docket No. 13-0553, that investigation was predicated on a complaint filed by the People as a protective measure, given ComEd's position in its then pending formula rate update case, Docket No. 13-0318, that certain adjustments being recommended by the People were outside of the formula rate tariff update analysis. Rather than debate that definition within the context of the 13-0318 FRU proceeding, the People filed a tandem complaint requesting that the Commission initiate an investigation of the certain changes made to the formula rate tariff approved in Docket 13-0386 following the passage of Public Act 98-0015 in order to ensure that the Commission would consider the recommended adjustments. As a result, the Commission initiated Docket No. 13-0553 pursuant to Section 10-113(a) of the Public Utilities Act ("the Act") to determine whether the Company complied with Public Act 98-0015. *ICC v. Commonwealth Edison Co.*, ICC Docket No. 13-0553, Order of October 2, 2013 at 3.

In addition, while the Commission did claim in Docket 13-0318 that the adjustments were "beyond the scope of this Section 16-108.5(d) annual update and reconciliation proceeding" (Order at 63), the Company fails to mention that the Order also states in the very next sentence, "This issue was decided in Docket No. 13-0553." ICC Docket No. 13-0318, Order of December 18, 2014 at 63. The relied upon reference, thus, appears simply to point out the fact that the topics were being addressed in another docket. The Commission's order in Docket No. 13-0553 had already been issued in the month prior when the Commission noted that fact. That recognition in no way amounted to a declaration of how to define the formula rate

tariff. Certainly, it must be said that the definition of what constitutes ComEd's formula rate tariff was *not* litigated in Docket No. 13-0318, or for that matter, in Docket No. 13-0553.

Accordingly, ComEd's references to these orders do not support its position.

B. ComEd's Preferred Definition of its Formula Rate Tariff Does Not Contribute to Goals of Transparency and Specificity Referenced in EIMA.

ComEd further argues that its formula rate tariff definition is the correct one because the supporting FRU schedules and appendices provide the certainty, standardization and transparency required by Section 16-108.5(c) of EIMA. ComEd IB at 7, 11-14. This argument, too, fails. Again, as pointed out by Staff witness Ebrey, only the *title* of each supporting schedule, appendix and workpaper is included in the tariff. These schedules include no detail of the information that is to be included on the schedules, appendices or workpapers that support FR A-1 and FR A-1 REC. Staff Ex. 2.0 at 3. She further noted that unlike the Commission's approval of specific information and formatting that is to appear on Schedules FR A-1 and FR A-1 REC, the Commission has *not* specified how information should appear on the supporting schedules, appendices and workpapers that are merely listed in ComEd's approved formula rate tariff. *Id.*

ComEd's supplementary argument at page 12 of its Brief, that Staff's definition "complicates, not simplifies, the annual FRU process, and results in the expenditure of more, not less, resources by the utility, Staff and intervenors," is not a credible argument in support of its proposed formula rate tariff definition, and in fact would nearly ensure that Article IX proceedings accompany every FRU docket. The fact that adjustments are proposed by Staff and Intervenor in ComEd's FRU dockets that are litigated in the cases is not something that the General Assembly sought to eliminate. Again, as noted above and in the People's Initial Brief, both Section 16-108.5(c) and Section 16-108.5(d)(3) contemplate Commission application of

Article IX analysis of the reasonableness and prudence of proposed rates. 220 ILCS 5/16-108.5(c) and 16-108.5(d)(3); AG Initial Brief at 7-9. Adopting ComEd's view of the formula rate structure would, in fact, supplement the litigation that occurs in each FRU docket with regular, necessary Section 9-201 proceedings each time Staff or Intervenor proposed an adjustment that referenced the schedules that accompany the FR A-1 and FR A-1 REC tariff pages. That view of the tariff in no way simplifies the annual formula rate update process.

ComEd's statement, too, that "taking complex arguments about the formula structure and protocols out of the annual updates" preserves resources and reduces the workload of the parties and the Commission is a false metric. ComEd IB at 12-13. Again, as noted above, litigation would only increase under ComEd's definition of the tariff. Moreover, the Commission is clearly obliged to "apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act" to FRU proceedings. 220 ILCS 5/16-108.5(d)(3). ComEd alleged concern for Staff and Intervenor workloads is nothing more than a thinly veiled attempt to drain those resources by requiring additional Section 9-201 proceedings each time an adjustment is proposed that falls within the formula rate schedules, and limit Commission authority to implement reasonable adjustments to proposed rates in the FRU proceedings. The Commission should reject these hollow rationales for adoption of ComEd's overly expansive definition of the formula rate tariff.

III. CONCLUSION

For the foregoing reasons, the People request that the Commission enter an order consistent with the recommendations in this Initial Brief.

Respectfully submitted,

The People of the State of Illinois

By LISA MADIGAN, Attorney General

_____/s_____
Karen L. Lusson
Senior Assistant Attorney General
Public Utilities Bureau
Illinois Attorney General's Office
100 West Randolph Street, 11th fl.
Chicago, Illinois 60601
Telephone: (312) 814-1136
Facsimile: (312) 814-3212
E-mail: klusson@atg.state.il.us

October 15, 2014